

EXHIBIT D

Rutherford, Jake

From: Genender, Paul
Sent: Wednesday, March 20, 2019 9:10 PM
To: Barefoot, Luke A.
Cc: Liman, Lewis J.; O'Neal, Sean A.; O'Reilly, Benet J.; Schrock, Ray; Singh, Sunny; Friedmann, Jared; Crozier, Jennifer Brooks; Pennington Prugh, Amanda; Rutherford, Jake; Sorkin, Joseph L.; Dizengoff, Ira
Subject: Re: Interim Agreement between Debtors and Transform Holdco

Luke,

Agreed with a full reservation of rights. Thanks and see you tomorrow. Paul

Paul R. Genender
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On Mar 20, 2019, at 9:36 PM, Barefoot, Luke A. <lbarefoot@cgsh.com> wrote:

Paul – thank you for preparing the below. Needless to say, your suggestion that any of these amounts represent “estate assets that Transform continues to withhold from the Debtors in violation of the automatic stay” is neither agreed nor productive to include. The motion papers and allegations they make speak for themselves.

Second, as to your characterization of the amounts we have agreed to remit on the schedule below, we cannot say with specificity that the round dollar figures represent current undisputed amounts. First, as to the bullet point on proration subject to Section 9.11 of the APA (note that the prorations are broader than simply rent), as we discussed at today’s meeting, the amounts and range of potential outcomes on the rent proration is subject to ongoing reconciliation with a significant range, such that it is not accurate to say that \$5M represents a currently undisputed amount. More generally, all of the figures we used were round numbers and approximations, not precise currently undisputed amounts. We would characterize this as simply the amounts we have agreed to pay pending completion of reconciliation.

A revised recitation is pasted below – please confirm that this comports with your agreement and any description you will include on the record tomorrow. Pending such a confirmation, we reserve all of our rights:

~~I write~~ **The below serves** to confirm the parties' interim agreement, made today during the meet-and-confer on the issues raised by the Debtors' motion to enforce and Transform Holdco's ("Transform") motion to mediate, ~~concerning Estate assets that Transform continues to withhold from the Debtors in violation of the automatic stay.~~

- **Cash in Transit.**

- On or before 4:00 p.m. EDT, Tuesday, March 26, 2019, Transform will (1) pay by wire to the Debtors \$3,000,000.00, ~~representing the currently undisputed portion of~~ **which amount Transform has agreed to pay in respect of cash in transit** Cash in Transit at Closing owed to the Debtors, **reconciled against checks written by the Debtors to satisfy pre-closing obligations ("Cash in Transit at Closing") pending further reconciliation as described below** and (2) produce documents and information to the Debtors reflecting and substantiating Transform's reconciliation to date of the Cash in Transit at Closing owed to the Debtors.
- On or before 4:00 p.m. EDT, Wednesday, April 3, 2019, Transform will (1) pay by wire to the Debtors any amount over and above \$3,000,000.00 representing the then undisputed portion of Cash in Transit at Closing owed to the Debtors and (2) produce documents and information to the Debtors reflecting and substantiating Transform's completed reconciliation of Cash in Transit at Closing owed to the Debtors (including any basis for disputed monies withheld).
- The parties reserve all rights and remedies should there continue, after April 3, 2019, to be a dispute concerning the amount of Cash in Transit at Closing owed to the Debtors.

- **Rent Proration Pursuant to Section 9.11 of the APA.**

- On or before 4:00 p.m. EDT, Tuesday, March 26, 2019, Transform will (1) pay by wire to the Debtors \$5,000,000.00, ~~representing the currently undisputed portion of~~ **Rent Proration which amount Transform has agreed to pay in respect of the proration contemplated by Section 9.11 of the Asset Purchase Agreement between the parties (the "APA")** ~~owed to the Debtors~~ and (2) produce to the Debtors documents and information reflecting and substantiating Transform's reconciliation to date of **such proration** ~~the Rent Proration owed to the Debtors.~~
- On or before 4:00 p.m. EDT, Wednesday, April 3, 2019, Transform will (1) pay the Debtors any amount over and above \$5,000,000.00 representing the then undisputed amount of **Rent Proration pursuant to Section 9.11 of the APA** ~~owed to Debtors~~ and (2) produce to the Debtors documents and information reflecting and substantiating Transform's completed reconciliation of **such proration** ~~the Rent Proration owed to the Debtors~~ (including any basis for disputed monies withheld).
- The parties reserve all rights and remedies—including **without limitation the rights set forth in section 9.11(d)(iv-vi)** ~~the Rent Proration Amount at the end of the 75-day period provided for in of the APA, April 29, 2019—should there continue, after April 3, 2019, to be a dispute concerning the amount of~~ **with respect to such proration** ~~Rent Proration owed to the Debtors.~~

~~In our view, the~~ **The** above items leave, as open issues to be addressed with the bankruptcy court at tomorrow's hearing **on these issues**, (1) the Credit Card Accounts Receivable piece of the Debtors' motion to enforce and (2) Transform's motion to mediate.

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From: Genender, Paul [<mailto:Paul.Genender@weil.com>]
Sent: Wednesday, March 20, 2019 8:01 PM
To: Liman, Lewis J. <lliman@cgsh.com>; Barefoot, Luke A. <lbarefoot@cgsh.com>; O'Neal, Sean A. <soneal@cgsh.com>; O'Reilly, Benet J. <boreilly@cgsh.com>
Cc: Schrock, Ray <Ray.Schrock@weil.com>; Singh, Sunny <sunny.singh@weil.com>; Friedmann, Jared <Jared.Friedmann@weil.com>; Crozier, Jennifer Brooks <Jennifer.Crozier@weil.com>; Pennington Prugh, Amanda <Amanda.PenningtonPrugh@weil.com>; Rutherford, Jake <Jake.Rutherford@weil.com>; Sorkin, Joseph L. <jsorkin@AkinGump.com>; Dizengoff, Ira <idizengoff@AkinGump.com>
Subject: Interim Agreement between Debtors and Transform Holdco

Lewis, Benet and Luke:

I write to confirm the parties' interim agreement, made today during the meet-and-confer on the issues raised by the Debtors' motion to enforce and Transform Holdco's ("Transform") motion to mediate, concerning Estate assets that Transform continues to withhold from the Debtors in violation of the automatic stay.

- **Cash in Transit.**

- On or before 4:00 p.m. EDT, Tuesday, March 26, 2019, Transform will (1) pay by wire to the Debtors \$3,000,000.00, representing the currently undisputed portion of Cash in Transit at Closing owed to the Debtors and (2) produce documents and information to the Debtors reflecting and substantiating Transform's reconciliation to date of the Cash in Transit at Closing owed to the Debtors.
- On or before 4:00 p.m. EDT, Wednesday, April 3, 2019, Transform will (1) pay by wire to the Debtors any amount over and above \$3,000,000.00 representing the then undisputed portion of Cash in Transit at Closing owed to the Debtors and (2) produce documents and information to the Debtors reflecting and substantiating Transform's completed reconciliation of Cash in Transit at Closing owed to the Debtors (including any basis for disputed monies withheld).
- The parties reserve all rights and remedies should there continue, after April 3, 2019, to be a dispute concerning the amount of Cash in Transit at Closing owed to the Debtors.

- **Rent Proration.**

- On or before 4:00 p.m. EDT, Tuesday, March 26, 2019, Transform will (1) pay by wire to the Debtors \$5,000,000.00, representing the currently undisputed portion of Rent Proration owed to the Debtors and (2) produce to the Debtors documents and information reflecting and substantiating Transform's reconciliation to date of the Rent Proration owed to the Debtors.
- On or before 4:00 p.m. EDT, Wednesday, April 3, 2019, Transform will (1) pay the Debtors any amount over and above \$5,000,000.00 representing the then undisputed amount of Rent Proration owed to Debtors and (2) produce to the Debtors documents and information reflecting and substantiating Transform's completed reconciliation of the Rent Proration owed to the Debtors (including any basis for disputed monies withheld).
- The parties reserve all rights and remedies—including the right to true-up the Rent Proration Amount at the end of the 75-day period provided for in the APA, April 29,

2019—should there continue, after April 3, 2019, to be a dispute concerning the amount of Rent Proration owed to the Debtors.

In our view, the above items leave, as open issues to be addressed with the bankruptcy court at tomorrow's hearing, (1) the Credit Card Accounts Receivable piece of the Debtors' motion to enforce and (2) Transform's motion to mediate.

Please confirm that the above accurately memorializes the terms of the parties' agreement.

Sincerely,

Paul



Paul R. Genender
Partner

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